Nos. 15,959 and 15,960

IN THE

United States Court of Appeals

For the Ninth Circuit

CHENG FU SHENG and LIN FU MEI,
Appellants,

vs.

BRUCE G. BARBER, District Director, Immigration and Naturalization Service,
Appellee.

On Appeal from the United States District Court for the Northern District of California, Southern Division.

BRIEF OF APPELLEE.

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BRIEF OF APPELLEE.

JURISDICTION.

By order filed April 22, 1958 this Court authorized the consolidation of the appeals in the above two actions. The same issue is presented in each case. The principal difference is the statutory authority under which jurisdiction is invoked.

Appellant Cheng Fu Sheng sought administrative review by way of a petition for writ of habeas corpus

invoking 28 U.S.C. 2241 after having been taken into custody by appellee.

Appellant Lin Fu Mei sought administrative review by filing a complaint for declaratory judgment invoking 28 U.S.C. 2201 and 5 U.S.C. 1009.

The scope of review in each case would appear to be the same.

Sigurdson v. DelGuercio, 241 F.2d 480 (9th Cir.) 154 F. Supp. 220;

Leonard Cruz-Sanchez v. Robinson, 249 F.2d 771;

Brownell v. Tom We Shung, 352 U.S. 180

STATUTE.

Section 6 of the Refugee Relief Act of August 7, 1953 (67 Stat. 403, 1953) as amended August 31, 1954 68 Stat. 1044, (50 U.S.C. App. 1971 (d)) is quoted in full on page 3 of Appellants' brief.

STATEMENT OF THE CASE.

Cheng Fu Sheng.

Appellant Cheng Fu Sheng last entered the United States from Formosa at Honolulu, T. H. on June 9, 1952 for the duration of his status as an accredited official of a foreign government recognized by the government of the United States, Sec. 3 (1) of the Immigration Act of 1924, as amended, 8 U.S.C. 203 (1946 ed.). Appellant was then a Captain in the

Chinese Nationalist Air Force. His purpose in coming to the United States was to receive advanced pilot training at Tyndall Air Force Base under the mutual defense assistance program. On October 21, 1952 appellant Cheng deserted his military unit as it prepared to depart from San Francisco.

By order dated December 2, 1953 Cheng was found to be deportable.

On November 3, 1953 he filed an application for adjustment of his immigration status to that of permanent resident under Section 6 of the Refugee Relief Act of 1953.

On December 9, 1955 the examining officer recommended denial of the application for the reason that "the applicant was of the class of alien which Congress did not intend to come within the purview of the Act." The Regional Commission denied the application on this ground on July 6, 1956. 8 C.F.R. 245a(11). On July 12, 1956 a complaint for declaratory judgment was filed in the United States District Court.

Lin Fu Mei.

Appellant Lin Fu Mei last entered the United States from Formosa at Honolulu, T. H. on February 12, 1953. He was admitted as a foreign government official under the provisions of Section 101(a)(15)(A) of the 1952 Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(A). Lin Fu Mei, as did Cheng Fu Sheng, came to the United States as a member of the Chinese Nationalist Air Force to receive training under the

mutual defense assistance program. After completion of his training, he deserted the Chinese Nationalist Air Force and refused to return to Formosa.

Lin Fu Mei filed an application for adjustment of his immigration status under Section 6 of the Refugee Relief Act of 1953. On December 22, 1955 the examining officer recommended denial of the application for the reason that the applicant was of a class of alien which Congress did not intend to come within the purview of the Act. On February 1, 1956 the Regional Commission denied the application on this ground.

On July 17, 1956 appellant filed a complaint for declaratory judgment in the United States District Court.

JOINT ACTION.

The contentions of the appellants in their respective actions were the same. Each claimed inability "to return to the country of his birth, nationality or last residence because of persecution or fear of persecution." The application of each was denied by the Regional Commissioner for the reason that "he was of the class of alien which Congress did not intend to come within the purview of the Act." The two cases were heard together by the court below and on September 28, 1956 by joint order plaintiffs' (appellants') motions for summary judgment were granted, holding plaintiffs (appellants) to be aliens within the meaning of the word "alien" in the statute. *Cheng Fu*

Sheng v. Barber, 144 F. Supp. 913. No appeal was taken from this judgment.

On remand to the appellee, a further hearing was conducted on February 8, 1957. Appellants contended desertion because of their opposition to the Nationalist Government of Chiang Kai Shek, and persecution because of this opposition if returned to Formosa. The Chinese Nationalist Government Consul General officially advised appellee that appellants would be subject to prosecution for desertion upon return to Formosa, but that they would be accorded due process, and a fair trial, including representation by counsel, and the right to cross-examine the witnesses. (Tr. pp. 11-12).

The Immigration Officer recommended denial of the application for the reason that appellants could return to Formosa "the place of [their] last residence without fear of persecution on account of [their] political opinion." On April 19, 1957 the Regional Commissioner denied the application.

Appellant Cheng Fu Sheng was thereafter taken into custody, and on April 29, 1957 filed a petition for writ of habeas corpus. On April 30, 1957 appellant Lin Fu Mei filed a complaint for declaratory judgment.

Within the framework of the two different proceedings habeas corpus and declaratory judgment, the relief sought by each appellant is the same:

(1) That they have satisfied the eligibility requirements of the statute, so the application cannot be denied by appellee.

(2) That appellant's application must be submitted to Congress under the provision of the Refugee Act.

The District Court denied the relief sought in each case and dismissed the action.

QUESTIONS PRESENTED.

Are appellants aliens who lawfully entered the United States as bona fide non-immigrants?

Are appellants unable to return to the country of birth, or nationality, or last residence, because of persecution or fear of persecution on account of race, religion or political opinion?

ARGUMENT.

I.

APPELLANTS CAN RETURN TO "COUNTRY" OF BIRTH, NATIONALITY AND LAST RESIDENCE.

Appellants were born within the area delineated on our maps as "China." At the time of their birth, this area was under the political domination and control of a sovereign entity, popularly known in this country as the "Chinese Nationalist Government," of whose military forces the appellants herein were members.

In 1949 the military forces of the Chinese Nationalist Government were defeated by the military forces of the Peoples Republic of China, popularly

known as "Red China," or "Communist China." The Chinese Nationalist Government retired to that portion of "China" known as "Taiwan" or "Formosa," where it has managed to remain to date. Currently the United States Government recognizes the Chinese Nationalist Government. The Peoples Republic of China is not recognized.

The statute with which we are concerned provides "That he is unable to return to the *country* of his birth, nationality or last residence" (emphasis ours).

Appellants in their brief have seized upon "residence" as the key to their contention, and have made an extensive study of the definition and meaning of the word. Engrossed in their consideration of "residence" they assumed that "China" and "country" were synonymous, with the consequent failure to distinguish "country" from "place." "China" and "Formosa" as words may identify "places" or specific areas on the surface of the earth, but do they necessarily also identify a "country."

It is the contention of appellee that the word "country" as used in the statute was intended to embody the nation, the state, the government having dominion over the "place."

A Circuit Court decision in New York in 1847, *U.S. v. The Recorder,* 27 Fed. Cases 718, provides a good "shoving off" point. An admiralty case, involving importation of colonial products contrary to the provision of the Act of Congress concerning navigation passed in 1817. The Act provided that no goods etc. shall be imported except in vessels of the United

States, or "in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, productions . . ." The vessel, *The Recorder,* was owned by British subjects residing in England. The goods were imported from London, but they were of growth, production and manufacture of the British East Indies. The word "country" was held to mean the entire nation, and that, therefore, the Act did not compel the production or manufactures of the dependencies of Great Britain to be imported in vessels belonging to the place of production or manufacture. From page 720 (2nd col.) the following is quoted:

> "It may be admitted that the term 'country,' used in the act, in its primary meaning, signifies place, and, in a larger sense, the territory or dominions occupied by a community, or even waste and unpeopled sections or regions of the earth; but its metaphorical meaning is no less definite and well understood, and, in common parlance, in historical and geographical writings, in diplomacy, legislation, treaties, and international codes, not to refer to sacred writ, the word 'country' is employed to denote the population, the nation, the state, the government, having possession and dominion over the country. Thus Vattel says: 'The term country seems to be well understood by everybody. However, as it is taken in different senses, it may not be unuseful to give it here an exact definition. It commonly signifies the state of which one is a member.' 'In a more confined sense, this term signifies the state, or even more particularly the town or place of our birth.' Vatt. Law Nat. bk. 1, c. 9, § 122. 'When a

nation takes possession of a distant country and settles a colony there, that country, though separated from the principal establishment or mother country, naturally becomes a part of the state, equally with its ancient possessions. Whenever, therefore, the political laws or treaties make no distinction between them, every thing said of the territory of a nation ought also to extend to its colonies.' Id. bk. 1, c. 18, § 210. The whole of a country possessed by a nation and subject to its laws, forms it [sic] territories; and it is the common country of all the individuals of the nation. Id. bk. 1, c. 19, § 211.

"It is very apparent, upon the provisions of the act of 1817, that congress understood and used the term 'country' in the enlarged sense given by Vattel. Thus 'nation,' in the proviso to section 1, 'foreign prince of state' in section 3, and 'foreign power' in section 4, all represent in their connection, the same idea as 'country' in the first section. The special designation of 'citizens or subjects,' does not mark with more precision that the law had reference to political powers and agencies, than does the mere word 'country,'—the thing containing, being, by a familiar form of speech, used for that which it contains; and besides, persons could, with no propriety of language, be styled 'citizens or subjects of a country,' without understanding 'country' to mean the state or nation and not merely a section or portion of territory belonging to a nation."

From page 721 (2nd Col.) the following is quoted:

"It has been shown that, by the well known principles of public law, colonies are parts of the

> dominion and country of the parent state, and the inhabitants are her subjects and citizens. It follows as a necessary consequence of that relationship that there can be no citizens or subjects of the colonies, as distinct and separate from the mother country, and that they can possess no shipping, which, in its character, ownership or employment, will be foreign to other nations, in any sense other than as belonging to their common country."

The Supreme Court has considered "country" in several cases.

In the case of the Tariff Acts, the Court said in *Stairs v. Peaslee,* 18 How. 521, 526 that the word "country" has always been construed "to embrace all the possessions of a foreign state, however widely separated which are subject to the same supreme executive and legislative control."

In construing legislation providing for the deportation of aliens "to the country whence they came," the Supreme Court in *Mensevich v. Tod,* 264 U.S. 134, 136, 137 was concerned with an order deporting Mensevich to Poland. He contended that the warrant was illegal because prior to his emigration to the United States he had been a resident of Tychny, in the Province of Grodno, then a part of Russia, and that at the time the warrant was issued Grodno had not been recognized by the United States as a part of Poland, and should have been treated as a part of Russia. The facts were that when the warrant was issued and the judgment was entered, Grodno was occupied and ad-

ministered by Poland, but there was a dispute between Poland and Russia as to the boundary, and while the United States had officially recognized Poland, Grodno had not been officially recognized as either within or without the boundaries of Poland. The Supreme Court held, page 136:

> "The term country is used in §50 to designate in general terms, the state which, at the time of deportation includes the place from which the alien came. Whether territory occupied and administered by a country, but not officially recognized as being a part of it, is to be deemed a part for the purposes of this section, we have no occasion to consider."

In *Burnet v. Chicago Portrait Co.,* 268 U.S. 1, the term "foreign country" was before the Court within the meaning of the Revenue Act of 1921, §238, in a proceeding brought for the redetermination of a deficiency in income tax for the year 1923. Respondent sought credit for a proportionate part of income taxes paid by that corporation to the Commonwealth of Australia, State of New South Wales and Dominion of New Zealand. The sole question was whether New South Wales was a "foreign country" within the meaning of the statute. The Supreme Court, at page 5, opened its consideration of the question as follows:

> "The word 'country' in the expression 'foreign country' is ambiguous. It may be taken to mean foreign territory or a foreign government. In the sense of territory, it may embrace all the territory subject to a foreign sovereign power. When referring more particularly to a foreign govern-

ment, it may describe a foreign state in the international sense, that is one that has a status of an international person with the rights and responsibilities under international law of a member of the family of nations; or it may mean a foreign government which has authority over a particular area or subject matter, although not an international person but only a component part, or a political subdivision, of the larger international unit. The term 'foreign country' is not a technical or artificial one, and the sense in which it is to be used in a statute must be determined by reference to the purpose of the particular legislation."

On page 7, the Court continued:

"In the instant case, the question is one of credit for income taxes paid to any foreign country. The word 'country' is manifestly used in the sense of government. And to decide what government fits the description, whether only that of a foreign power which may be considered an international person, or that of a political entity which, although not an international person, levies and collects income taxes, which may be the subject of the intended credit, it is necessary to consider the object of the enactment and to construe the expression 'foreign country' so as to achieve, and not defeat its aim."

The Court held New South Wales levied the income taxes for which credit is sought and that its government had adequate authority to impose them and that the taxes, therefore, fell within the statutory provision.

The use of the phrase "country whence he came" as used in Section 237 of the Immigration and Nationality Act has received the attention of the 2nd Circuit in several cases. In *U. S. ex rel. Karamian v. Curran,* 1927, 16 F.2d 958, the relator for writ of habeas corpus was born in Persia. He was rescued from persecution and sent to Mesopotamia. From there he went to India and then to France, where he lived for a year. He sailed to Mexico, from which country he secretly entered the United States. The Court held he had come from France "because he had been there long enough to have a place of abode, whether it was technically a residence or domicile or neither of them, [is not] material; he started from France, so he came from that country."

In two succeeding cases, the 2nd Circuit departed from this rule, *U.S. ex rel. DePaola v. Reimer,* 1939, 102 Fed.2d 40 and *U.S. ex rel. Mazur v. Comm. of Immigration,* 1939, 101 F.2d 707, declaring the country whence an alien came "has generally been held to mean the country of the alien's nativity if it does not appear that he has acquired a domicile elsewhere." In *U.S. v. Holland American Line,* 1956, 231 F.2d 373, 376 the 2nd Circuit explicitly adopted the *Karamian* rule, settled the "nativity" "abode" dispute and established the rule "The country from whence an alien comes is that country in which the alien has a place of abode and which he leaves with the intention of coming ultimately to this country."

The *Karamian* rule was further illuminated by the 2nd Circuit in *U. S. ex rel. Milanovic v. Murff,* 1957,

253 F.2d 941 by the holding "We think that the statute manifests an intention, when an alien is excluded, that the situation existing before the arrival of the alien in this country be restored so far as possible." Milanovic was born in Jugoslavia in 1925. During World War II he served in the Royal Jugoslav Navy and fought against Tito. His father was killed by Titoists. After the war he could not return to live under the Tito government. He spent 2½ years in a displaced persons camp maintained by England in Italy. He was released and shipped as a crewman on an Italian vessel. The ship arrived in New York Harbor, where he was informed he would not be paid, but would be returned to Italy for possible deportation to Jugoslavia. He jumped into the bay and swam to a tugboat and was turned over to immigration. He was determined to have entered the United States illegally, but he avoided deportation by shipping out on a Panamanian vessel. This vessel was sold. Milanovic left the vessel in Antwerp, Belgium, where he lived in a seaman's house for about 40 days. Belgian immigration authorities would not permit him to remain, so the owners of the last vessel on which he sailed transported him to New York. He was detained by immigration and ordered excluded. The Immigration and Nationality Service was unable to obtain a consent for his entry to Belgium, but they did obtain a consent for him to enter Jugoslavia and he was ordered deported to Jugoslavia. A petition for habeas corpus was filed presenting the contention that Jugoslavia is not the country from "whence he came." The Court of Appeals agreed with the District Court

Judge that Jugoslavia was not the country from which Milanovic came.

Judge Palmieri, the District Court Judge, in *In Re Milanovic's Petition,* 162 Fed. Supp. 890, 895 had found that "Milanovic's return to the country of his birth, if such were ordered, would not be a return to the jurisdiction of the government which he left. Cf. *Delaney v. Moraitis,* 4 Cir., 1943, 136 F.2d 129."

In the *Delaney* case cited for comparison by Judge Palmieri in *Milanovic,* the 4th Circuit Court of Appeals had before it another complicated "country" problem. Moraitis was born in Greece. He embarked for the United States from a port in Spain, and entered the United States as an alien seaman in 1939. He overstayed his time and was clearly deportable. 8 U.S.C. 156 provided that "The deportation of aliens provided for in this chapter shall at the option of the Attorney General, be to the country whence they came or to the foreign port at which such alien embarked for the U.S." Spain, the country from which he embarked, refused to accept him. In the meantime Greece had been overrun by Germany, and it was not possible to deport him to that territory. It had been arranged to deliver him into the custody of the Greek Government in exile in England. Moraitis sought a writ of habeas corpus, contending that as the warrant could not be executed by sending him to the area identified as Greece occupied by Germany, he should be released. The respondent contended that the warrant can be substantially executed by deporting petitioner to England to the Greek Government functioning in exile. The District Court dismissed the petition

on condition that the petitioner be not deported to any country other than Greece. *Moraitis v. Delaney,* 46 Fed. Supp. 425 (D.C.Md.). The 4th Circuit Court of Appeals (136 F2d 129) modified the order by removing the condition. The following is quoted from Page 130 of the Court of Appeals Opinion.

> "It is true, of course, that the term 'country' as used in the statute must be construed, ordinarily, to refer to the territory from which the alien came. *Mensevich v. Tod,* 264 U.S. 134, 136, 44 S.Ct. 282, 68 L.Ed. 591. But a man's 'country' is more than the territory in which its people live. The term is used generally to indicate the state, the organization of social life which exercises sovereign power in behalf of the people. *United States v. The Recorder,* 27 Fed. Cas. page 718, 721, No. 16,129. Ordinarily the state exercises sovereignty only within the territory occupied by its people; but a different situation is presented when the territory is overrun by its enemies and its government is in exile in the territory of a friendly nation exercising power in international matters in behalf of its nationals. In such case the government in exile has taken over the only exercise of sovereign power left to the people of the country and is the only agency representing the country with which a foreign government can deal.
>
> "It must be remembered in this connection that the deportation of an alien is not a mere matter of taking him beyond the seas and setting him down on foreign soil. *Saksagansky v. Weedin,* 9 Cir., 53 F.2d 13. It must be carried out through arrangements made with the foreign government.

These arrangements are matters arising in the international relationships of the nation; and these international relationships the governments in exile are thoroughly competent to deal with. They are true governments set up and organized to protect the interests of their nationals, and their powers with regard thereto are recognized and respected by the friendly nations in whose territory they function. They exercise sovereign power, moreover, not only with respect to their nationals, but also with respect to the vessels of their countries; and it has long been recognized that a vessel partakes of the character of national territory. It appears in this case that the government of the United States recognizes the Greek government functioning in England as the government of Greece and deals with it as such. In the matter of deporting an alien who has come to this country from Greece, the government must deal with the Greek government in England; and when, under agreement with that government, it arranges to return the alien into its power, it is not unreasonable to treat such delivery as a deportation to the 'country' whence he came in accordance with the statutory requirement.

"[4] The word 'country' as used in the statute is not a technical or artificial one, and the sense in which it is used must be determined by reference to the purpose of the particular legislation. *Burnet v. Chicago Portrait Co.,* 285 U.S. 1, 5, 6; 52 S.Ct. 275, 277, 76 L.Ed. 587."

Within the field of influence of western culture or civilization, the relationship of the individual to the

collective entity of government has been considered and identified by such terms as "citizen" and "subject," "sovereign," "king," "republic," "democracy," "monarchy," etc.

From *United States v. Wong Kim Ark,* 169 U.S. 655 is quoted the following:

> "The fundamental principle of the common law with regard to English nationality was birth within the allegiance, also called 'ligealty,' 'obedience,' 'faith' or 'power,' of the King. The principle embraced all persons born within the King's allegiance and subject to his protection."

And from *Chisholm v. Georgia,* 2 U.S. 419, page 454:

> "To the constitution of the United States the term *sovereign* is totally unknown."

And on Page 455:

> "Who, or what, is a sovereignty? What is his or its sovereignty? . . . In one sense, the term *sovereign* has for its correlative, *subject.* In this sense, the term can receive no application; for it has no object in the constitution of the United States. Under that constitution, there are *citizens,* but no *subjects.*"

The point of the above two citations from *United States v. Wong Kim Ark* and *Chisholm v. Georgia* is that an individual in the terms of his "birth," "nationality," or "citizenship" as related to the "country" must be measured by the governmental entity, nation or sovereign which constitutes the so-called

"country," as opposed to the physical area of the surface of the earth which may be involved.

From the consideration of all of the foregoing citations, the contention of appellee is clear. The appellants were born within the geographical area which they call "China" at a time when that area was controlled, or governed, by a sovereign entity identified as the "Chinese Nationalist Government." The said area called "China" or "The Republic of China" also included the island called "Formosa" or "Taiwan." Both appellants were members of the armed forces of the sovereign "Chinese Nationalist Government." By October 1949 the sovereign entity "Chinese Nationalist Government" was confined within the geographic area identified as the island of "Formosa." Another sovereign entity called the "Peoples Chinese Republic," "Red China" or "Communist China," by force of arms occupied and assumed control and government of the area called "China" except that portion called "Formosa." The appellants, along with the Chinese Nationalist Government and its forces, retired into the area called "Formosa." The Chinese Nationalist Government has, since October 1949, been confined to the area of China called "Formosa" in the exercise and performance of its sovereign function.

The conclusion from the foregoing is irresistible. The "country" of "birth," "nationality" and "last residence" within the meaning of the Refugee Relief Act is the area of China under the sovereign control and government of the "Chinese Nationalist Government" or "Republic of China."

II.

PROSECUTION FOR DESERTION IS NOT "PERSECUTION".

Each appellant entered the United States as an accredited official of the Chinese Nationalist Government, members of the Air Force of said "country." Each sought and obtained the benefit of advanced pilot training in the guise of such accredited officials. Instead of returning to their "country" upon completion of said training, they deserted the Chinese Nationalist Air Force. Their argument now is that they embraced certain statements of a person by the name of Dr. K. C. Wu, which said statements are critical of the Chinese Nationalist Government, and that, therefore, they will be "persecuted" if returned to the Chinese Nationalist Government. Undoubtedly they will be prosecuted for desertion, but the probability of "prosecution" is not "persecution or fear of persecution on account of race, religion, or political opinion."

III.

APPELLANTS FAILED TO MAINTAIN STATUS.

Appellants disagree with the District Court's second conclusion of law:

> "Upon the termination of his status as a bona fide non-immigrant within the meaning of Section 6 of the Refugee Relief Act, petitioner became ineligible for the benefits of that Act."

This conclusion followed the Court's reliance on the Seventh Circuit Court of Appeals' decision in *Wei v.*

Robertson, 246 F.2d 739. A particularly pertinent quotation from page 744 of the *Wei* decision is the following:

> "Under either act (1924 or 1953) Wei possessed a privilege pivoting on his continued maintenance of status. Even if the current savings clause were utilized, Wei would still be compelled to maintain his status. *There is nothing in either Act allowing Wei, or any other alien, from parleying permissive entry into permanent domicile by the simple expedient of refusing to leave America."*

Wei like appellants was a member of the Chinese Nationalist Air Force admitted to the United States in 1952 under Section 3(1) of the 1924 Act for training. He also failed and refused to return to Formosa on completion of the training. The Court held maintenance of his status was dictated by the statutory standard under either the 1924 or the 1952 Act:

Page 746:

> "We find nothing in the 1924 Act helpful to Wei's case. He improved his status by refusing, and articulating his rejection, to return to Formosa and his subsequent employment simply buttresses the announced relinquishment. Wei was not admitted to this country for the purposes of becoming a civilian employee of private business. Compare: *Yee Si v. Boyd,* 9th Cir. 1957, 243 F.2d 203. Whether the statute or regulations omit mention of, or inhibit non-immigrant aliens from, taking employment is beside the mark. *The statutory standard under either act dictates maintenance of status consonant with the purpose for*

which the alien received the privilege of admission." (Emphasis added).

The District Court's reliance on the *Wei* decision fully supports the conclusion of law of which appellants complain. The bona fide quality of the entry must be sustained by maintenance of the status in order to satisfy the requirements of Section 6.

CONCLUSION.

The feeling of this Court as indicated in the case of *Yee Si v. Boyd,* 243 F.2d 203, cited by the 7th Circuit Court of Appeals in the *Wei* case for comparison, in the statement at page 204: "We do not look with favor upon this deportable alien's attempt to play ducks and drakes with the laws and the Courts of the United States" is applicable to this case.

It would not seem desirable to encourage personnel of foreign governments admitted as accredited officials to disavow their credentials and to thereby benefit because of ineffective administrative or judicial disposition.

The matter of the recognition of foreign governments, and the admission of officials in possession of proper credentials of such recognized foreign governments is not within the province of the Judicial Branch of the government of the United States. The appellants here, although "aliens," do not appear to be proper persons for consideration under Section 6. The District Court in its previous decision 146 F.

Supp. 913 has said they are. If so, then the "bona fide" character of their entry can only be established by maintenance of their status as accredited officials. In the words of the *Wei Decision* "There is nothing in either Act allowing Wei, or any other alien, from parleying permissive entry into permanent domicile by the simple expedient of refusing to leave America."

Appellants have attempted to convert their vulnerability to "prosecution," or court martial for desertion into "persecution," and would avoid return to the portion of "China" occupied by the Chinese Nationalist Government on the ground that it is not the "country" of birth, nationality, or last residence. Which "country" is to be considered as embracing the place of birth may be subject to some dispute, but that the "country" of the Chinese Nationalist Government is the "country" of nationality and last residence, appellee believes to be without doubt.

It is respectfully submitted that the judgment of the District Court is correct and should be affirmed.

Dated, San Francisco, California,
June 1, 1959.

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